IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.3681 of 2005

Date of Decision : September 05, 2006.

Sanjeev Babbar ..... Petitioner

Vs.

Kala Rani ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Harsh Aggarwal, Advocate
for the petitioner.

Mr.Ashwani Kumar Chopra, Senior Advocate
with Mr.Harminder Singh, Advocate
for the respondent.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed against the order dated 19.02.2001 passed by the Rent Controller, Chandigarh and order dated 3.6.2005 passed by the appellate authority, Chandigarh whereby an eviction petition filed by the landlord, respondent in this revision petition, was allowed on the ground of personal necessity and first appeal filed by the defendant was dismissed.

Assailing the said orders learned counsel for the petitioner

firstly argued that the judgment in the case of *Rakesh Vij vs. Dr.Raminder Pal Singh Sethi and others* reported as *2005 (2) RCR 354* would not apply to the facts of the present case . He has referred to Section 13 of the East Punjab Urban Rent Restriction Act, 1949 to contend that in *Rakesh Vij's* case (supra) the Hon'ble Supreme Court was considering the claim under Section 13 (3) (a) (i) wherein reference to a scheduled building occurs. On the other hand he submits that his case is covered under Section 13 (a) (ii) wherein reference has been made to non residential building. He submits that since the judgment in the case of *Rakesh Vij* is for the case of scheduled building and not a non residential building, the said judgment would not apply to the facts of the present case.

I find absolutely no merit in this contention. In *Rakesh Vij's* case, the controversy before the Supreme Court is noted in paragraph 9 of the judgment. The question as framed by the Hon'ble Supreme Court is as hereunder :-

> *"The question, which arises for consideration is, whether in the Union Territory of Chandigarh a landlord can seek eviction of a tenant from a non-residential building on the ground of his own use."*

This question is answered in paragraph 23 of the judgment which reads as under :-

> *"Therefore, read in any manner the inevitable consequence is that the word "the Act" occurring in Section 2 of the Chandigarh Extension Act has to be read as the East Punjab Urban Rent Restriction Act, 1949 as it stood before the Amendment Act, 1956. The result that follows is that in the Union Territory of*

> *Chandigarh it is open to a landlord to seek eviction of a tenant from a non residential building on the ground of his own use."*

A reading of the portions extracted herein above would show that the Hon'ble Supreme Court has clearly held that a landlord can seek eviction of a tenant in Chandigarh from a non residential building.

Learned counsel for the petitioner then contends that the findings given regarding personal necessity by the Rent Controller and affirmed by the appellate authority cannot be sustained. He contends that the bona fide necessity in the present case is not proved as the landlady has herself admitted that she is running business from her own house. He further submits that it has also come on record that business is also being run by her son from booth no.11 in the mini market of Sector 38 under the name and style of *Roop Kala Fabric*. The said contention has been considered by the learned Rent Controller and rejected with the following observations :-

> *"Admittedly the petitioner is the owner as well as landlady of booth in question and the said premises was given on rent to the respondent. Now the version of the petitioner is that she requires the same for her personal use and occupation in order to start the business of clothes. There is only oral evidence on behalf of the respondent that the petitioner is running the clothes business under the name and style of Roop Kala Fabric in booth No.11 Mini Market, Sector 38-C, Chandigarh. No documentary evidence has been placed on the record to that effect. On the other hand, petitioner has*

examined her son Gulshan Aggarwal – PW-2 who categorically deposed that he has been running a cloth business in said booth No.11 as a tenant under the ownership of his father Prem Chand. In the light of this evidence it can not be said that the petitioner has any concern with the said booth No.11, Mini Market, Sector 38-C, Chandigarh. Petitioner has further established that she has no other building in Chandigarh nor she has vacated any such building."

The appellate authority has affirmed the said observations of the learned Rent Controller. Relevant portion of the order of the appellate authority is as hereunder :-

"....In order to rebut the evidence produced by the landlady respondent, the tenant has examined himself as RW3 in which he has stated that the demised premises is a commercial booth and he is running the business of optician. He stated that the respondent landlady is running the business of handicraft and readymade garments in booth no.11 in the market of Sector 38, Chandigarh under the name and style of Roop Kala Fabrics and that the son of the petitioner is not working in that booth and the landlady wants to increase the rent. But in his cross examination, he has admitted that the business in booth no.11, Sector 38 is being run by the son of the landlady and he is an income tax assessee. In view of the said admission that the business in booth No.11 is being run by the son of the petitioner, no reason

> *is left to disbelieve the petitioner that she bona fide requires the premises. She cannot be compelled to continue to run her business in her own house as it is the sweet-will of the landlady to run or start her business in the shop in question."*

I find no reason to disturb these firm findings of fact establishing the personal necessity of the landlord in this revision petition. I therefore find no merit in this contention.

Learned counsel then contends that his counter claim has been wrongly rejected by the Rent Controller. Learned counsel contends that he had tendered rent in cash in the court up to June 1998. He however states that earlier also he had paid rent by way of two cheques as rent for the months of June and July in the account of the petitioner. On the other hand, Mr.Chopra, learned counsel for the landlord submits that actually rent in cash had been tendered for only up to 30.04.1998 and not for any subsequent period. Therefore the rent paid by cheques was rightly paid for the succeeding months. Further a reading of the order of the Rent Controller also shows that the petitioner-tenant has not filed any court fee against the counter claim and this issue was not even seriously disputed at the time of arguments. As a result, this issue was decided against the respondent. I therefore find no merit in this contention as well.

The present revision petition is therefore dismissed in the aforementioned terms.

September 05, 2006 (P.S.Patwalia)
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